

Central Administrative Tribunal, Principal Bench

Original Application No. 2256 of 1998

New Delhi, this the 15th day of September, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mrs. Shanta Shastri, Member (A)

Rajinder Singh (HC No. 1088/DAP)
Presently holding the post of Constable
R/o House No. 3005
Gali No. 33-A, Tughlakabad Extn.
New Delhi.

- Applicant

(By Advocate: Ms. Jasvinder Kaur)

Versus

Commissioner of Police,
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi-110 002.

- Respondents

(Shri Nihal Singh, Departmental Representative on
behalf of the respondents)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this case has challenged the order dated 24.12.1997 passed by the Senior Additional Commissioner of Police (P&T) vide which the applicant had been demoted to the rank of Constable from the post of Head Constable for a period of 3 years with immediate effect.

2. Facts in brief are that the applicant along with 2 other Head Constables, namely, Nanhe Ram, Head Constable and Chand Ram, Head Constable was proceeded departmentally on the allegations that all of them were deployed for guard duty at 12, Lodhi Estate at the residence of the then, Commissioner of Police and during that period, a pistol was issued for duty purposes for Head Constables and these Head Constables neither maintained any arms and ammunition register nor made any entry in Daily Diary Register regarding

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handing over/taking over of arms physically resulting in theft of a 9 MM pistol (E-2876) along with 10 cartridges and 5 rounds of .303 rifle. On these allegations, enquiry was held. The Inquiry Officer returned the findings holding that charge stood proved against all the three. The disciplinary authority vide order dated 13.6.97 dismissed all the three Head Constables. The applicant preferred an appeal and it appears that all the three had filed their appeals which was disposed of by a common order. Their appeals were accepted to the extent that the order of dismissal was modified and they were reduced to the rank of Constables, which is being impugned in this OA.

3. The learned counsel appearing for the applicant submitted that the conclusion of the Inquiry officer is based on hearsay evidence and the findings arrived at is only on the basis of probabilities without supporting evidence and disciplinary authority had not appreciated the report of the Inquiry Officer properly.

4. The learned counsel for the applicant further stated that the order is not based on any evidence rather it is a case of no evidence against the applicant since the applicant particularly was transferred from his duty of guard on 24.5.96 and he reported back to his Battalion and the shortcomings in the arms and ammunitions were detected only on 31.5.96. If at all any theft had taken place that had

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taken place after the applicant had been transferred back to his Battalion. Thus there was no evidence against the applicant. The Inquiry officer had simply presumed that since all of them were posted on rotation guard duty, so the applicant is also guilty.

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5. The counsel for the applicant further submitted that none of the Prosecution Witnesses had mentioned that the applicant was posted there^h on the date of incident. Rather Shri Ishwar Dayal, ACP admitted during his cross-examination that the Head Constable Rajinder Singh was not posted there^h on the date of incident. So all along, the counsel for the applicant argued that the disciplinary authority did not appreciate the evidence/statement given by the prosecution witnesses.

6. The counsel for the applicant further stated that the applicant had been falsely implicated in the case just to safeguard the other 2 other constables.

7. In reply to this, the counsel for the respondents submitted that both the disciplinary as well as appellate authority had considered the evidence and record but the appellate authority had taken a lenient view and modified the order of removal from service and reduced him from the post of Head Constable to that of Constable for a period of 3 years. The respondents also submitted that the Head Constables who perform such like duty of an armed guard duty at the residence of VIP's are not expected to act in a casual nature towards safety of the arms

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and ammunition, as the facts indicate that they had not properly recorded the handing over/taking over of the ammunition and this itself is a clear misconduct and that is why the applicant had been punished. (11)

8. He further submitted that the findings submitted by the Inquiry Officer that the applicant had not given the charge of arms and ammunition in writing and had also failed to maintain proper record about maintenance and safety of arms and ammunitions of the Guard, so there is ~~a~~ sufficient evidence on record which fully proves ~~that~~ ^{that his} negligence and carelessness in the discharge of official duties by the applicant.

9. At the outset we may mention that while exercising the power of judicial review the court cannot embark upon the functions of reappreciating the evidence or being the same like the appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority the same has to be sustained. In this case the evidence on record shows that there was dereliction of duty on the part of the applicant and his other colleagues as they did not maintain the Register of arms and ammunitions. There is also evidence available on record that when the applicant had taken charge he had made an entry in the daily diary register but at the time of his transfer he did not make any entry in the daily dairy register so that shows that there is some evidence available on record which rather proves about the dereliction of

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duty on the part of the applicant. This court is not required to go into the evidence and to reappreciate the same and by no stretch of imagination, it can be said that it is a case of no evidence at all.

10. The next ground taken by the applicant is that he has been falsely implicated in this case just to safeguard the other two Head Constables. There is nothing on record which indicates that the applicant has been victimised just to safeguard the interest of other Head Constables, as such applicant has been rightly punished.

11. No other ground has been raised or contested before the Court. Hence, we find that the OA has no merits and it does not call for any interference and the same is accordingly dismissed. No costs.

Shanta J
(Mrs. Shanta Shastri)
Member(A)

Kuldip Singh
(Kuldip Singh)
Member(J)